

Commercial Crime Insurance

Policy Wording



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Welcome to Zurich

About Zurich

The insurer of this product is Zurich Australian Insurance Limited (ZAIL) ABN 13 000 296 640, incorporated in Australia trading as Zurich New Zealand. In this policy wording, ZAIL may also be expressed as 'Zurich', 'we', 'us' or 'our'.

ZAIL is part of the Zurich Insurance Group, a leading multi-line insurance provider with a global network of subsidiaries and offices. With about 55,000 employees, the Zurich Insurance Group delivers a wide range of general insurance and life insurance products and services for individuals, small businesses, and mid-sized and large companies, including multinational corporations, in more than 170 countries.

Duty of Disclosure

Before the *insured* enters into a contract of general insurance with us, the *insured* has a duty to disclose to us every matter they know, or could reasonably be expected to know, is relevant to our decision whether to insure the *insured* and, if so, on what terms. This applies to all persons to be covered under this contract of insurance.

The *insured* has the same duty to disclose those matters to us before they renew, extend, vary or reinstate a contract of general insurance. This duty however, does not require disclosure of a matter that:

- diminishes the risk to be insured;
- is of common knowledge;
- we know or in the ordinary course of our business we ought to know; or
- we indicate to the *insured* that we do not want to know.

Non-disclosure or Misrepresentation

If you make a material misrepresentation to us, or if you do not comply with your duty of disclosure we may treat your policy as if it never existed.

Our contract with you

Your policy is a contract of insurance between you and Zurich and contains all the details of the cover that we provide.

Your policy is made up of:

- the policy wording. It tells you what is covered, sets out the claims procedure, exclusions and other terms and conditions of cover;
- the *submission*, which is the information you provide to us when applying for insurance cover;
- your most current policy *schedule* issued by us. The policy *schedule* is a separate document unique to you, which shows the insurance details relevant to you. It includes any changes, exclusions, terms and conditions made to suit your individual circumstances and may amend the policy; and
- any other written change otherwise advised by us in writing (such as an endorsement). These written changes vary or modify the above documents.
- This document is used for any offer of renewal we may make, unless we tell you otherwise. Please keep your policy in a safe place. We reserve the right to change the terms of this product where permitted to do so by law.

Commercial Crime Insurance – Policy Wording

Subject to payment of the premium set out in the *schedule*, we agree to provide insurance on the terms set out in this policy.

1. Insuring Clause

We will indemnify the *policyholder* for its *financial interest* in respect of any *loss* incurred by an *insured* which results directly from any *criminal acts* first *discovered* during the *period of insurance* or any *extended discovery period* (if applicable) and notified to us in accordance with Condition 6.8 'Discovery and Notice' of this policy.

For the purposes of the Insuring Clause, *criminal acts* shall mean any *internal crime* or *external crime*.

(a) Internal crime

internal crime means any fraudulent or dishonest single, continuous or repeated act(s) committed by an *employee* acting alone or in collusion with others which causes a *loss* to the *insured*.

(b) External crime

external crime means any fraudulent or dishonest single, continuous or repeated act(s) or a series of acts committed by a *third party* of:

(i) *theft*;

(ii) *forgery*;

(iii) *fraudulent alteration*;

(iv) *counterfeiting*;

(v) *computer fraud*;

(vi) *fraudulent induced transfer* only if Extension of Cover 4.12 'Fraudulent impersonation' of this policy is covered; or

(vii) crime not otherwise insured or excluded under this definition where the *third party* obtained *improper financial gain* and is found guilty and convicted by a final judgment in a recognised criminal court of law of such criminally sanctioned act.

External crime shall in no event mean:

(1) *corporate transaction*;

(2) *voluntary exchange or purchase* unless covered under *forgery*, *fraudulent alteration*, *counterfeiting* or *computer fraud*; or

(3) *investment activities*.

2. Definitions

When used in this policy, its *schedule* and its endorsements the following definitions shall apply:

2.1 Client

client means a customer of an *insured* to whom such *insured* provides goods or services under a written contract, for a fee or other monetary consideration.

2.2 Computer fraud

computer fraud means *loss* of the *insured's* money, *securities* or *property* due to any fraudulent or dishonest misuse or manipulation by a *third party* of the computer systems, programs or funds transfer systems owned or operated by the *insured*.

2.3 Corporate transaction

corporate transaction means any transaction involving the purchase or sale of shares, equity, debt or assets of any entity.

2.4 Counterfeit or Counterfeiting

counterfeit or *counterfeiting* means the intentional imitation of any currency notes or coins such that an *insured* is deceived on the basis of the quality of the imitation to believe that the imitation is the authentic original currency.

2.5 Credit card fraud

credit card fraud means the *forgery* or alteration of, on or in, any written instrument required in connection with any credit card issued to an *insured*, to any *director* or *officer*, or any partner or to any *employee* of the *insured*.

2.6 Data reconstitution costs

data reconstitution costs means the reasonable costs (other than remuneration payable to any *employee*, partner, *director* or *officer* of any *insured*, and the cost of their time or costs or overhead of any *insured*) incurred in reproducing or amending the software programs or systems where such reproducing or amendment is necessary to correct damages caused to the programs or to amend the security codes following a *criminal act* in respect of the use of the computer hardware or software programs or systems owned and operated by the *insured* and which was the subject of a *loss* under this policy.

2.7 Deductible

deductible means the amount stated in the *schedule*, which shall be the responsibility of the *insured*, as applicable, in respect of each loss or claim for indemnity under the policy.

2.8 Director or Officer

director or *officer* means any natural person who was or now is a director or officer of the *policyholder* or any *subsidiary* (or the equivalent position in any jurisdiction) or who becomes a director or officer of the *policyholder* or any *subsidiary* (or the equivalent position in any jurisdiction) during the *period of insurance*, including de jure, de facto and shadow directors.

2.9 Discovered or Discovery

discovered or *discovery* means the moment on which the *insured* or any partner, *director* or *officer*, departmental head or other senior manager or the equivalent thereof, not in collusion with any person(s) committing the *criminal act*, becomes aware of any fact or facts that give reasonable grounds to believe that *loss* as insured under this policy has been or may be incurred even though the exact amount or details of the *loss* may not then be known.

2.10 Employee

employee means:

- (a) any natural person who is employed under a contract of service with an *insured* (which shall include the first 60 days after the cessation of such service) in the ordinary course of the *insured's* business whom the *insured* compensates by payment of salary, wages or commissions and has the right to govern and direct in the performance of such service;
- (b) any natural person who works under the supervision of an *insured* and who is subject to the same controls and procedures as the person mentioned under (a) above;
- (c) any natural person who is a trustee, fiduciary, administrator or officer of any *superannuation fund*;
- (d) any natural person who is a volunteer or temporary personnel whilst performing acts within the scope of an *employee's* normal duties;
- (e) any natural person who is a retired employee of the *policyholder* working under a written contract; or
- (f) any natural person whose identity the *insured* is unable to discover, but whose *criminal act* caused a *loss* under this policy and the evidence proves that the *loss* was sustained due to a *criminal act* of a person under (a), (b), (c), (d) or (e) above.

But excluding:

- (i) any partner of the *insured* (where the *policyholder* or its *subsidiary* is a partnership);
- (ii) any *employee* who, at the time of *loss*, controls more than 20% of the voting rights of an *insured*;
- (iii) any director or executive of the *insured*, when acting in their capacity as a director of the *insured*, and not in his or her capacity as an *employee* of the *insured*; and
- (iv) any external auditor, broker, factor, commission merchant, consignee, contractor, other agent, representative, or equivalent thereof.

2.11 Extended discovery period

extended discovery period means the relevant period of cover stated in the *schedule*.

2.12 Extortion

extortion means any threat to personally injure *employees* or *directors* or *officers* or their family members, or to damage or destroy any tangible *property* (including computer systems, software or programs) owned by the *insured* or for which the *insured* is legally liable, provided that prior to surrender of any money, *securities* or *property*, the person receiving the threat has made a reasonable effort to report the threat to another *employee* or *director* or *officer*, and the *insured* has made a reasonable effort to report the threat to the relevant authority.

2.13 Financial institution

financial institution means any bank including any merchant or investment bank, finance company, insurance or reinsurance company (other than a captive owned by the *insured*), mortgage bank, savings and loan association, building society, credit union, stockbroker, investment trust, asset management company, fund manager or any entity established principally for the purpose of carrying on commodities, futures or foreign exchange trading or any other similar entity.

2.14 Financial instrument

financial instrument means cheques, drafts or similar written promises, orders or directions to pay a certain sum of money that are made, drawn by or drawn upon an *insured* or by anyone acting or purporting to be acting as the *insured's* agent.

2.15 Financial interest

financial interest means the financial interest of the *policyholder* which is deemed to be the equivalent of a *loss* sustained by an *insured*.

2.16 Forgery

forgery means:

- (a) the signing of another natural person's name; or
- (b) the endorsing or amending without authority,

of any cheque, draft, promissory note or bill of exchange or other *financial instrument* given or received by an *insured* with the intent to deceive in consequence of which the *insured* has acted or transferred funds or goods.

Mechanically or electronically produced or reproduced signatures shall be treated as hand written signatures.

2.17 Fraudulent alteration

fraudulent alteration means a material alteration to any *financial instrument* for a fraudulent or dishonest purpose by a person other than the person who was authorised to sign such *financial instrument*.

2.18 Fraudulent induced transfer

fraudulent induced transfer means loss of money, *securities* or *property*, on deposit in the *insured's* own account, resulting directly from a transfer resulting from the good faith reliance upon a fraudulent *transfer instruction*:

2.18.1 transmitted to the *insured* or *employee* of the *insured* via an electronic mail, telefacsimile, telephone or other written instruction received by the *insured* or *employee* of the *insured* that is not in collusion with the sender of the fraudulent instruction; and

2.18.2 that purports, and reasonably appears, to have originated from:

- (a) an *employee* of the *insured* specifically authorised by the *insured* to make such instruction; or
- (b) a *vendor* authorised by the *insured*;

but the sender of the fraudulent *transfer instruction* was not, in fact, such *employee* or *vendor* but someone impersonating such and the impersonated *employee* or *vendor* had no knowledge or consent of such fraudulent *transfer instruction* received by the *insured*; and

2.18.3 containing a misrepresentation of material fact reasonably relied upon that directs the *insured* or *employee* of the *insured* to transfer, pay, or to change the method, destination or account for payments to such *employee* or *vendor* referenced in item 2.18.2 above.

2.19 Improper financial gain

improper financial gain means any person gaining any *property*, money or *securities* from the *insured* to which that person was not legally entitled. *Improper financial gain* shall in no event include salaries, bonuses, fees, commissions, promotion, emoluments or other remuneration.

2.20 Insured

insured means:

- (a) the *policyholder*;
- (b) any *subsidiary*; and
- (c) any employee *superannuation fund*.

'You' and 'Your' is also used in this policy to mean one or more of the *insured*.

2.21 Investigation costs

investigation costs means all reasonable and necessary costs incurred by the *insured* to establish the amount of a *loss* (other than remuneration payable to any *employee*, partner, *director* or *officer* of any *insured*, cost of their time or costs or overhead of any *insured*) with our written consent in connection with a covered *loss* to be paid under this policy where the *loss* is excess of the applicable *deductible*.

2.22 Investment activities

investment activities means the act or purported act of investing or trading in *securities*, commodities, futures or foreign exchange.

2.23 Limit of liability

limit of liability means the Limit of Liability stated in the *schedule*.

2.24 Loss

loss means the direct financial loss of any *property*, money or *securities* sustained by an *insured* as a direct result of a *criminal act* and shall include *investigation costs* and *data reconstitution costs*.

2.25 Loss investigator

loss investigator means a Zurich appointed investigator and/or forensic expert.

2.26 Period of insurance

period of insurance means the Period of Insurance stated in the *schedule* and any extension thereof which may be agreed between us and the *policyholder*.

2.27 Policyholder

policyholder means the legal entity designated in the *schedule*.

2.28 Preliminary expenses

preliminary expenses means up to 8 hours of time spent by a *loss investigator* assisting the *insured* with the investigation of its *loss* and the production of its proof of *loss*.

2.29 Property

property means tangible property of an *insured* other than money or *securities*.

2.30 Public relations expenses

public relations expenses means the reasonable fees, costs charges and expenses of a public relations firm or consultant, crisis management firm or law firm which the *insured* may engage, with our written consent, to prevent or limit the adverse effects of negative publicity in connection with a *criminal act* covered by this policy.

2.31 Securities

securities means any bond, debenture, note, share, stock or other equity or security for debt, and will include any certificate of interest or participation in, receipt for, warrant or other right to subscribe to or to purchase, voting trust certificate relating to, or other interest in any of the foregoing items representing money or *property*. *Securities* shall not include money or *property*.

2.32 Schedule

schedule means the Schedule attaching to and forming part of the policy, including any *schedule* substituted for the original *schedule*.

2.33 Subsidiary

subsidiary means any company or other legal entity over which the *policyholder* exercises effective governance or control or in respect of which the *policyholder* directly or indirectly:

- (a) controls or controlled the composition of the board of directors;
- (b) controls or controlled more than half of the voting power; or
- (c) holds or held more than half of the issued share capital or other ownership of the entity,

and shall in any event include any company or legal entity whose financial accounts are required to be consolidated with those of the *policyholder* pursuant to the Companies Act 1993 (NZ) or the applicable New Zealand accounting standard and any incorporated joint venture over which the *insured* exercises effective management and control.

Cover for any *subsidiary* shall only apply in respect of *loss* arising out of any *criminal act* committed whilst such entity is a *subsidiary* of the *policyholder*.

2.34 Submission

submission means:

- (a) any information and/or statements or materials;
 - (b) any proposal form completed and signed by any *insured* (including any attachments thereto, information included therewith or incorporated therein) for this policy and any previous policy for which this policy is a replacement or renewal; and
 - (c) the financial statements and annual reports of any *insured*,
- requested by or supplied to us by or on behalf of the *policyholder* either before or during the *period of insurance*.

2.35 Superannuation fund

superannuation fund means any superannuation fund established and sponsored solely by the *insured* and solely to provide retirement benefits to the *insured's* past, present or future *employees, directors or officers* or their respective beneficiaries.

2.36 Telephone system

telephone system means the *insured's* interconnected multiple telephone system or Private Automatic Branch Exchange (PABX) system, including remote access, voicemail, auto attendants and automated call directors, that is owned or exclusively leased by the *insured* and located on the *insured's* premises for the purposes of telecommunications.

2.37 Territorial limits

territorial limits means the Territorial Limits specified in the *schedule*.

2.38 Theft

theft means the unlawful permanent deprivation of money, *securities* or *property*, whether from the *insured's* premises or in transit or otherwise. For the avoidance of doubt, *theft* includes robbery.

2.39 Third party

third party means any person or entity other than the *insured*, not being an *employee* or acting in collusion with an *employee*, and not being excluded from the definition of *employee*.

2.40 Transfer instruction

transfer instruction means an instruction directing the *insured* to transfer money, *securities* or *property*.

2.41 Vendor

vendor means any entity or natural person from whom the *insured* purchases goods or services under a written contract, for a fee or other monetary consideration. However, *vendor* does not include any *financial institution*, asset manager, broker-dealer, armoured motor vehicle company, or any similar entity.

2.42 Voluntary exchange or Purchase

voluntary exchange or purchase means the voluntary giving or surrendering (whether or not such giving or surrendering is induced by deception) of money, *securities* or *property* in any exchange or purchase.

3. Limit of Liability

The *limit of liability* as stated in the *schedule* shall be our maximum liability payable under this policy for each covered *loss* sustained by all *insureds* and *discovered* during the *period of insurance* and the *extended discovery period* (if applicable). The *limit of liability* shall apply over and above the applicable *deductible*.

All indemnification and sub-limits provided by the extensions pursuant to the Extensions of Cover of this policy shall be part of, and not in addition to the *limit of liability* for the *period of insurance*, including the *limit of liability* for any *extended discovery period* (if applicable).

Where more than one *loss* arises from one *criminal act* or from a series of *criminal acts* which are connected causally with another or which are by any means inter-related or inter-connected, they shall be deemed to be a single *loss* notwithstanding the number of *loss* notifications that have been made and such single *loss* shall be attributed solely to the *period of insurance* or the *extended discovery period* (if applicable) during which the first *loss* arising from such series of *criminal acts* was *discovered*.

Our aggregate liability for *loss* or *losses* sustained by any or all persons, companies or other entities forming part of the *insured* shall not exceed the amount for which we would be liable if all *losses* were sustained by any one of the persons, companies or other entities forming part of the *insured*.

4. Extensions of Cover

Cover is automatically provided, and on the same terms and in the same manner as in the Insuring Clause (except as expressly stated), for the features described below. Each feature is subject to all the other provisions of this policy, including any additional terms stipulated in connection with it. No feature shall increase our *limit of liability* unless expressly stated otherwise.

4.1 Business interruption

We shall indemnify the *policyholder* for any reasonable Additional Costs incurred as a result of a *loss* covered under this policy provided that these Additional Costs are beyond the *insured's* usual operational costs and necessary to the restoration of the normal course of operations of the *insured's* business.

For the purpose of this extension:

- (a) Additional Costs shall mean:
 - (i) renting fee for temporary replacement equipment and temporary additional premises;
 - (ii) costs of additional external workforce and overtime of *employees*; and
 - (iii) costs related to transportation of equipment or documents,which have been incurred by the *insured* during the Indemnification Period and after the Waiting Period.
- (b) Waiting Period shall mean the period of 48 hours starting from the *discovery* of the *loss*.
- (c) Indemnification Period shall mean the period of 90 days immediately starting after the Waiting Period.

4.2 Care, Custody and Control

We shall indemnify the *policyholder* for the *loss of property*, money or *securities* under the control and custody of an *insured* and for which such *insured* is legally liable.

For the purposes of this extension only, the definition of *property* is amended as follows:

'*property*' shall mean any tangible property other than money or *securities*.

4.3 Client liability

We shall indemnify the *policyholder* for *loss* sustained by a *client* from *improper financial gain* committed by an *employee* not in collusion with such *client's* directors or employees, where such *loss* is *discovered* during the *period of insurance* or the *extended discovery period* (if applicable).

4.4 Continuous cover

We shall indemnify the *policyholder* for *loss* sustained at anytime and *discovered* during the *period of insurance*.

4.5 Contractual penalties

We shall indemnify the *policyholder* for any contractual penalty assumed by and enforced against an *insured* under a written contract, resulting directly from a *loss* covered under this policy.

Our liability provided by this extension is sub-limited to the percentage specified in the *schedule*.

4.6 Court attendance costs

We agree to provide up to \$250 per day for court attendance costs incurred by the *insured*, if the *insured* is legally compelled to attend a civil proceeding as a witness in connection with a *loss* covered by this policy.

Our total aggregate liability during any one *period of insurance* for all court attendance costs shall not exceed \$50,000 and shall be part of and not in addition to the *limit of liability* as shown on the policy *schedule*.

4.7 Credit card fraud

We shall indemnify the *policyholder* for direct *loss* suffered by an *insured* resulting from *credit card fraud* committed by a *third party* which direct *loss* is *discovered* during the *period of insurance* and the *extended discovery period* (if applicable).

4.8 Data reconstitution costs

We shall indemnify the *policyholder* for reasonable *data reconstitution costs*.

4.9 Erroneous fund transfer

We shall indemnify the *policyholder* for *loss* resulting from unlawful taking by a *third party* of money or *securities* erroneously directed or erroneously transferred by an *insured*.

4.10 Extended discovery period

If this policy upon termination is neither renewed nor replaced by any other policy covering the same or a similar risk, the *policyholder* shall have the right to a single *extended discovery period* as stated in the *schedule* and subject to payment of the additional premium stated in the *schedule*. Any *loss discovered* during such *extended discovery period* and notified to us in accordance with Condition 6.8 'Discovery and Notice' of this policy, shall be considered for cover, but only with respect to *criminal acts* committed prior to the termination date of the *period of insurance*. This *extended discovery period* shall not apply in the event of cancellation of this policy due to the non-payment of the premium.

The right to the single *extended discovery period* shall terminate unless written notice is given to us by the *policyholder* within thirty (30) days of the effective date of the non-renewal of this policy. Once the *extended discovery period* has been elected by the *policyholder* the entire premium for the *extended discovery period* shall be deemed earned at its commencement.

4.11 Extortion

We shall indemnify the *policyholder* for any *loss* due to *extortion* committed by an *employee* of an *insured*.

4.12 Fraudulent impersonation

We shall indemnify the *policyholder* for *loss* caused by *fraudulent induced transfer* first sustained by the *policyholder* and *discovered* during the *period of insurance* or any *extended discovery period* (if applicable).

The maximum that we will pay in the aggregate for such *fraudulent induced transfer* is the 'Fraudulent impersonation' sub-limit of liability stated in the *schedule*.

4.13 Interest

We shall indemnify the *policyholder* for the amount of any interest receivable or payable by the *insured*, resulting directly from a *loss* covered by this policy, between the time of sustaining such *loss* and the date of *discovery* of such *loss*. Our liability for such interest receivable or payable will be calculated by applying the average base rate in force by the Central Bank in the country of the *policyholder* in the *period of insurance*.

4.14 Investigation costs

We shall indemnify the *policyholder* for *investigation costs* incurred by an *insured*, which are directly related to a *loss* covered under this policy.

Our liability provided by this extension is sub-limited to the amount specified in the *schedule*.

4.15 Legal expenses

We shall pay reasonable court costs and legal fees incurred with our prior written consent in defending the *insured* in any legal proceeding to enforce payment of any cheque, draft, promissory note or bill of exchange or other *financial instrument* which was the subject of *forgery* covered by this policy.

4.16 Loss investigator

We shall pay the *preliminary expenses* of a *loss investigator* on behalf of the *policyholder*, following notification by an *insured* of its *discovery* of a *loss* in accordance with Condition 6.8 'Discovery and Notice' of this policy. The *insured* may request the appointment of a *loss investigator* to assist with the investigation of its *loss* and production of its proof of *loss*. It shall be the right and duty of Zurich and not of the *insured* to appoint the *loss investigator*.

Following the exhaustion of the *preliminary expenses* of the *loss investigator*, if the *insured* continues the retainer of the *loss investigator*, the costs of the *loss investigator* may be considered under Extension of Cover 4.14 'Investigation costs' subject to all relevant terms and conditions noted therein.

4.17 New subsidiaries

- (a) Any entity (other than a *financial institution*), whether created or acquired, that becomes a *subsidiary* during the *period of insurance* of this policy shall be included as an *insured* under this policy, at no additional premium, with respect to *losses* for *criminal acts* committed after the date such entity became a *subsidiary* and while such entity remains a *subsidiary*, subject to the following:
 - (i) the *subsidiary* has gross annual turnover and number of *employees* which are less than 25% of the gross annual turnover and number of *employees* of the *insured* at the inception date of this policy; and
 - (ii) the *subsidiary* has not, in the preceding 3 years, sustained *loss* of a type covered by this policy (whether insured or not) which was greater than the amount of the *deductible*.

Any such newly acquired or created *subsidiary* not meeting the above requirements acquired or created during the *period of insurance* shall be included under this policy as an *insured* for a period of ninety (90) days from becoming a *subsidiary* or until the expiry date of the *period of insurance*, whichever period expires first. The *policyholder* shall:

1. notify us in writing of the creation or acquisition of such entity;
2. provide us with full underwriting information as we may require; and
3. agree to any additional premium and/or amendment of the provisions of this policy required by us relating to such *subsidiary*.

Further, we will only indemnify the *policyholder* for the *financial interest* for a *loss* resulting from *criminal acts* committed after the date such entity became a *subsidiary* and while such entity remains a *subsidiary* conditional upon the *policyholder* paying, when due, any additional premium required by us for such new *subsidiary*.

- (b) We may also agree in writing, in our sole discretion and after having received all appropriate information, to indemnify the *policyholder* for its *financial interest* for a *loss* resulting from *criminal acts* committed prior to the date of acquisition and *discovered* during the *period of insurance*. With regard to such cover for prior acts, we reserve our right to vary the terms of this policy.

4.18 Outsourcing

We shall indemnify the *insured* for any direct financial loss of money, *securities* or *property* as a result of any fraudulent or dishonest single, continuous or repeated act(s) or a series of acts committed by employees of any company to whom the *insured* outsources services (including but not limited to payroll, computing or accountancy services) under a written contract.

Provided that:

- (a) the *insured* is able to prove that the company to whom services were outsourced has been checked for their honesty, competence and financial stability and retains the right to audit their services;
- (b) where any loss perpetrated by an employee of such outsourcing company is also insured under a policy under which that employee is a beneficiary or pursuant to an indemnity under a contract then this policy will only cover such loss to the extent that the amount of such loss is excess the amount of such other insurance; and

- (c) where any loss perpetrated by an employee of such outsourcing company is also covered under an indemnity agreement under which that employee is a beneficiary then this policy will only cover such loss to the extent that the amount of such loss is excess the amount of such indemnity agreement.

4.19 Partners

Cover in respect of *internal crime* is extended to cover any fraudulent or dishonest single, continuous or repeated act(s) which causes a loss to the *insured* committed by a partner of the *insured* (where the *policyholder* or its *subsidiary* is a partnership) whilst performing acts coming within the scope of the usual duties of an *employee*, whether acting alone or in collusion with others.

Provided that we will not pay the amount of such *loss* equal to the financial value of such partner's equity share of the *insured* as determined by the closing value of the *insured's* books of account as of the date of *discovery* of the *loss* by the *insured* or any partner not in collusion with the partner who committed such act.

4.20 Public relations expenses

We will pay the *insured's public relations expenses* in connection with a *criminal act* covered by this policy, up to the Sub-limit of liability specified in the *schedule*.

4.21 Run off cover for ceased subsidiaries

In respect of any entity which is being sold or discontinued during the *period of insurance* and which was previously included as an *insured* under this policy, this policy shall continue to indemnify the *policyholder* for any *loss* in connection with any *criminal act* which was committed whilst such entity was an *insured*.

This extension will not apply if the *policyholder* has no contractual liability for *loss* arising out of *criminal acts* committed prior to the date of sale or discontinuation of such former *insured*.

4.22 Telephone system fraud

Cover in respect of *external crime* is extended to cover any unauthorised access and use of the *insured's telephone system* by a *third party* which causes a loss to the *insured*. Indemnity under this Extension of Cover is limited to toll and line charges for which the *insured* is liable as a result of such unauthorised access and use.

We shall only be liable for toll and line charges incurred for a period of 45 days, inclusive from the date on which the first such unauthorised toll or line call is made.

Our total aggregate liability during any one *period of insurance* for all toll and line charges under this Extension of Cover shall not exceed the Sub-limit of liability specified in the *schedule*.

Provided that we will not pay anything in respect of loss:

- (a) directly or indirectly arising from the inability of the *insured* or any other person to use the telephone system(s);
- (b) directly or indirectly arising from the provision of professional services of any kind; or
- (c) due to the voluntary giving, surrendering, sale, exchange or transfer of *telephone system* access or usage whether legitimate or fraudulent, including but not limited to extortion, trickery or profiteering.

For the purposes of this Extension of Cover *third party* does not include a person or entity that previously provided or currently provides services under any contract for services, written or implied, with any *insured*.

5. Exclusions

We will not pay anything in respect of any:

5.1 Consequential loss

consequential loss directly or indirectly arising from or in connection with any *loss*, unless covered under Extensions of Cover 4.1 'Business interruption', 4.5 'Contractual penalties', 4.6 'Court attendance costs', 4.8 'Data reconstitution costs', 4.13 'Interest', 4.14 'Investigation costs', 4.15 'Legal expenses', 4.16 'Loss investigator' or 4.20 'Public relations expenses'.

5.2 Fire

loss caused by any fire.

5.3 Fraudulent induced transfer

loss caused by, arising out of directly or indirectly from *fraudulent induced transfer*, unless such loss is covered under Extension of Cover 4.12 'Fraudulent impersonation'.

5.4 Intellectual property rights and Trade secrets

loss of or arising from the accessing of any confidential information including but not limited to trade secrets, computer programs, customer information, patents, trademarks, copyrights or processing methods, except to the extent that any such information is used to support or facilitate the committing of a *criminal act* covered by this policy.

5.5 Kidnap and Ransom

loss arising from or in connection with kidnap, ransom or any threat thereof.

5.6 Known criminal acts

loss caused by:

- (a) any *employee* whom the *insured* was aware had previously committed a *criminal act* before or after the date of commencement of employment by the *insured*; or
- (b) for the purposes of cover under Extension of Cover 4.19 'Partners', any partner whom the *insured* was aware had previously committed a *criminal act* before or after the date on which such person became a partner.

5.7 Nuclear

loss alleging, arising out of, based upon or attributable to, or in any way involving directly or indirectly, the hazardous properties of nuclear material including but not limited to the actual, alleged, threatened or potential:

- (a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- (b) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

5.8 Specific documents

loss in connection with the *forgery*, *counterfeiting* or *fraudulent alteration* of, on or in, any account receivable, or assignments thereof, bills of lading, warehouse or trust receipts, or receipts serving a similar purpose.

However, this exclusion shall only apply to *external crime*.

5.9 Territorial limits

loss arising from a *criminal act* occurring outside of the *territorial limits* of this policy.

5.10 Trade finance and Trade loans

loss resulting from the full or partial non-payment of or default under any:

- (a) credit agreement, extension of credit or hire purchase agreement;
- (b) loan or transaction of the nature of a loan;
- (c) lease or rental agreement; or
- (d) invoice, account, agreement or any other evidence of debt.

However, this exclusion shall only apply to *external crime* and then shall not apply to any loss where the *insured* has relied or acted upon any document that contains *forgery*, *fraudulent alteration* or *counterfeit* of currency notes or coins.

5.11 War

loss arising out of the consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, terrorism, rebellion, revolution, insurrection or military or usurped power or confiscation, nationalisation, requisition, destruction of or damage to *property* by or under the order of any government or public or local authority.

6. Conditions

The following Conditions apply to your policy.

6.1 Assignment

This policy and any rights under it shall not be assigned without our prior written consent.

6.2 Authorisation

The *policyholder* is authorised to act on behalf of all *insureds*.

6.3 Cancellation

- (a) The *policyholder* may cancel this policy by giving notice in writing to us at any time.
- (b) We may cancel this policy by notifying the *insured* in writing, if the *insured* is in breach of the terms or conditions, or for any other reason available at law. Notice of cancellation has the effect of cancelling this policy at 4.00 pm on the 30th business day, after the day on which notice was sent to the *policyholder*.
- (c) After cancellation by the *policyholder* a refund of premium will be allowed pro rata of 80% of the premium for the unexpired *period of insurance*.
- (d) After cancellation by us a refund of premium will be allowed pro rata for the unexpired *period of insurance*.
- (e) However, in the event of the notification of a *loss* which is covered under the policy the premium shall be regarded as fully earned and may be retained by us.

6.4 Change in control

If during the *period of insurance* a Change in Control occurs which results in:

- (a) the liquidation (whether voluntary or compulsory) of the *policyholder* or the appointment of a trustee in bankruptcy, receiver, or liquidator (or similar official or person) for the *policyholder*; or
- (b) control of the *policyholder* being taken over by any government or by officials appointed by any government or local authority (hereafter called 'Change in Control'),

then the cover provided by this policy shall only apply to *criminal acts* which occurred prior to the effective date of such Change in Control and which were first *discovered* during the *period of insurance* and notified to us in accordance with Condition 6.8 'Discovery and Notice' of this policy.

The *policyholder* shall give written notice to us of such Change in Control as soon as reasonably practicable. Notwithstanding the effect on cover caused by such a Change in Control there shall be no entitlement to cancellation of this policy by any party hereto and the entire original premium for this policy shall be deemed to have been fully earned as of the date of the Change in Control.

6.5 Change of risk

Every change materially affecting the facts, circumstances, degree or amount of risk existing at the commencement of this insurance or at any subsequent renewal date shall be notified in writing to us as soon as such change comes to the notice of the *insured* or any of their officers or representatives. On receipt of such notice we may vary the terms of this policy and/or charge such additional premium as we may determine appropriate.

6.6 Changes to the policy

The terms and conditions of this policy may only be altered by a written endorsement issued by us.

6.7 Deductible

We shall be liable only for the amount of each *loss* or claim for indemnity under this policy that exceeds the applicable *deductible*. The *deductible* is not part of our liability for any *loss* or claim for indemnity.

A single *deductible* shall apply to all *loss* or claims for indemnity arising from any *criminal act* or series of *criminal acts* which are causally connected with another or which are by any means inter-related or inter-connected.

The *deductible* shall be paid by the *insured* and will be the first amount of *loss* or a claim for indemnity borne by the *insured*.

The *deductible* shall remain uninsured.

6.8 Discovery and Notice

The *insured* as a condition of coverage shall, upon the *discovery* of *loss*, provide written notice to us within 90 days of such *discovery*.

Written notice shall include but not be limited to full particulars as to dates and persons involved, the date and manner in which the *insured* first became aware of the matters underlying the *loss*.

All notices under any provision of the policy shall be put in writing and given by courier, certified mail or email to:

Head of Claims
Zurich New Zealand
PO Box 497
Shortland Street Auckland 1140

Or by email to:

Head of Claims
fl.claims@zurich.com.au

Any notification, sent by post or email, will be effective from the date received by Zurich.

6.9 Fraudulent notifications

If any notification under this policy is in any respect fraudulent or if any fraudulent means be used by the *policyholder* or any one acting on their behalf to obtain any benefit under this policy or if any *loss* be caused or contributed to by the wilful act or with the connivance of the *insured* all benefit under this policy shall be forfeit and the *policyholder* shall immediately reimburse us for any payments that it may have made in respect of such notification.

6.10 Knowledge

Knowledge possessed or *discovery* made by any person, company or entity forming part of the *insured* or by any partner, *director* or *officer*, departmental head or other senior manager or the equivalent thereof shall be deemed to constitute knowledge possessed or *discovery* made by all other persons, companies or entities forming part of the *insured*.

6.11 Other insurance

If a *loss* under this policy would, but for the existence of this policy, be insured by any other valid and collectable policy or indemnity, we shall only be liable for any amount beyond that collectable under such other policy.

6.12 Payment of loss

Payment of any *loss* under this policy to the *policyholder* shall fully release us on account of such *loss*.

6.13 Payments in respect to Goods and Services Tax

All *limits of liability* in this policy (except for the deductible) exclude GST where that GST is recoverable by us under the Goods and Services Tax Act 1985. We add GST, where applicable, to claim payments. However, this does not apply to the *deductible* which is GST inclusive.

6.14 Plurals and Titles

The *submission*, this policy, its *schedule* and any endorsements are one contract in which, unless the context otherwise requires:

- (a) headings are descriptive only, not an aid to interpretation;
- (b) singular includes the plural, and vice versa;
- (c) the male includes the female and neuter; and
- (d) references to positions, offices or titles shall include their equivalents in any jurisdiction in which a claim is made.

6.15 Proper law and Jurisdiction

The construction, interpretation and meaning of the provisions of this policy shall be determined in accordance with New Zealand law.

In the event of any dispute arising under this policy including, but not limited, to its construction and/or validity and/or performance and/or interpretation, the *policyholder* will submit to the exclusive jurisdiction of any competent Court in New Zealand.

6.16 Proof of loss

The *insured* shall furnish a proof of *loss* with full particulars of the *loss* to Zurich as soon as reasonably possible in support of its claim under the policy. Unless otherwise agreed, a reasonable time frame will be deemed to be 12 months from the date of *discovery*.

The *insured* may not offer, as a part of any proof of *loss*, any computation or comparison which involves in any manner a profit and loss computation or comparison. The *insured* may offer a comparison between an *insured's* inventory records and actual physical counts of its inventory to prove the amount of *loss* only where an *insured* establishes that, wholly apart from such comparison, it has sustained a covered *loss* caused by an *employee*.

6.17 Recoveries

Any sums recovered following a payment or payments under this policy shall be distributed in the following order:

- (a) the costs incurred in the course of such recovery, whether to the *policyholder* or to us;
- (b) to the *policyholder* in respect of any amount by which the amount of the *loss* exceeded the *limit of liability*;
- (c) to us to the extent of the *loss* paid or payable; and
- (d) to the *policyholder* for the amount of any *deductible* applicable.

6.18 Sanctions regulation

Notwithstanding any other terms or conditions under this policy, Zurich shall not be deemed to provide coverage and will not make any payments nor provide any service or benefit to any *insured* or any other party to the extent that such cover, payment, service, benefit and/or any business or activity of the *insured* would violate any applicable trade or economic sanctions, law or regulation.

6.19 Subrogation

We may at any time at our own expense take such steps as we may deem necessary to obtain reimbursement from any person (or that person's estate) committing a *criminal act* against the *insured* resulting in a *loss* which we have paid or will become liable to pay under this policy and for this purpose use the name of the *insured*. The *policyholder* shall as and when required give all necessary information and assistance to us.

6.20 Valuation of losses

(a) Securities

In no event shall we be liable in respect of *securities* for more than the actual cash value thereof at the close of business on the business day on which the *loss* was *discovered*.

(b) Books of accounts and Records

In the case of *loss* of or damage to *property* consisting of books of accounts or other records (other than electronic data) used by the *insured* in the conduct of their business, we shall be liable under this policy only if such books or records are actually reproduced and then for not more than the cost of blank books, blank pages or other materials plus the cost of labour and computer time for the actual transcription or copying of data which shall have been furnished by the *insured* in order to reproduce such books and other records.

(c) Electronic data

In the event that a *loss* covered under this policy results in the destruction, erasure or *theft* of electronic data used by the *insured* while such data is stored within the *insured's* computer systems, we shall be liable under this policy if such data is actually reproduced and cover hereunder shall only apply to the cost of labour for the actual transcription or copying of data, which shall have been furnished by the *insured* in order to reproduce such electronic data.

(d) Damage to premises

In the case of damage to the premises, we shall not be liable for more than the actual diminution in value of the *property*.

(e) Foreign currency

If a foreign currency (being a currency other than the currency in which this policy is written) is involved in a *loss* sustained by the *insured* under this policy, then for the purpose of any calculation required in the settlement of a *loss*, the rate of exchange shall be the published rate in the Australian Financial Review on the date of such settlement.

(f) Property

In no event shall we be liable in respect of *property* (not included in the above), for more than the actual cash value thereof at the time of *loss* or for more than the diminution in value of the *property* of such *property* or of replacing same with *property* or material of like quality and value, provided however, the actual cash value of such other *property* held by the *insured* as a pledge, or as collateral for an advance or loan, shall be deemed not to exceed the value of the *property* as determined and recorded by the *insured* when making the advance or loan, nor, in the absence of such record, the unpaid portion of the advance or loan plus accrued interest thereon at legal rates.

6.21 Waiver of privilege

If we instruct any lawyer to investigate or defend any *loss* against any *insured*, the *policyholder* authorises the lawyer to provide us any documents, information or advice in respect of the *loss*, including in relation to indemnity, and the *insured* waives any privilege to the extent necessary to give full effect to our entitlement in this respect.

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